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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,430	07/31/2001	Kevin H. Hansen	IDF 1660 (4000-04700)	4192
28003	7590	02/07/2006	EXAMINER	
SPRINT 6391 SPRINT PARKWAY KSOPHT0101-Z2100 OVERLAND PARK, KS 66251-2100				WALSH, JOHN B
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/919,430	HANSEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John B. Walsh	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 12 January 2006.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 1/8/2002.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 11, 12 and 19 recite the term “and/or”. The metes and bounds of the claims cannot be ascertained since the term renders the claims unclear. The examiner suggests the applicant choose either “and” or “or” instead of “and/or”.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1- 8 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,085,241 to Otis.

As concerns claims 1 and 12, Otis '241 disclose a measuring device for a network and a service node for coupling a client/terminal to a network having at least one server (column 1, line 20-26); a switch (column 6, line 30); a bandwidth measurement device (column 1, lines 5-10) coupled to said path, said bandwidth measurement device configured for independently

determining upload and download data transfer rates between said client and said service node (column 5, lines 66-67).

Otis '241 does not explicitly disclose said service node comprising: a gateway configured for connection to a network; a data routing system extending from said switch to said gateway, said switch, data routing system and gateway collectively forming a path, through said service node, configured for coupling said client to said network; each one of said plurality of subscriber terminals coupled to said service node by a corresponding xDSL line; said service node comprising: a switch coupled to each one of said plurality of xDSL lines; a gateway coupled to the Internet; a data routing system extending from said switch to said gateway, said switch data routing system and gateway collectively forming a path, through said service node, for coupling each one of said plurality of subscriber terminals to the Internet. However, it would have been an obvious design choice to provide the network of Otis with a gateway and an xDSL line.

As concerns claims 2, 13 and 15, it would have been an obvious design choice to have a router within a network.

As concerns claims 3 and 14, wherein said bandwidth measurement device is coupled to said gateway (coupled via the computer network).

As concerns claim 4, it would have been an obvious design choice to provide the network with an ATM edge switch since these limitations do not appear to effect the patentable operation of the invention and the invention would work equally well with another device or network.

As concerns claim 5, the service node of claim 3, it would have been an obvious design choice for said client is a PC and said network is the Internet. These limitations do not appear to effect the patentable operation of the invention and would work equally well with another device or network.

As concerns claims 6 and 16, wherein said bandwidth measurement device is a server (column 3, lines 12-43).

As concerns claims 7 and 17, wherein a measurement application resides on said bandwidth measurement server, said measurement application determining said upload and download data transfer rates for said bandwidth measurement server (column 5, lines 66-67).

As concerns claim 8, the service node of claim 7, wherein, if determining said upload data transfer rate between said client and said service node, said measurement application determines said upload data transfer rate based upon an analysis of arriving data packets originating at said client and, if determining said download data transfer rate between said service node and said client, said measurement application generates data packets for transfer to said client (column 5, lines 66-67).

5. Claims 9-11 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,085,241 to Otis as applied above in view of U.S. Patent No. 6,757,255 to Aoki et al.

Otis '241 does not explicitly disclose an applet on the client or a web application residing on a server. Otis '241 does disclose web hosting (column 3, line 9).

Aoki et al. '255 teach an applet on a client and a web application residing on a server (column 10, lines 37-63).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Otis '241 to provide an applet/agent on the client side or on a server, as taught by Aoki et al. '255, in order to provide enhanced accessibility to the application.

As concerns claims 11 and 19, Otis '241 disclose wherein said bandwidth measurement server further comprises a measurement database (column 4, line 25) coupled to said measurement application, said measurement database maintaining data collected during measurement of said upstream and/or downstream data transfer rates.

As concerns claim 20, Otis '241 disclose wherein said measurement database is further coupled to said web application, said service provider terminal accessing said data maintained in said measurement database through said web application (column 4, lines 20-29).

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over [www.DSLreports.com](http://www.DSLreports.com), speed tests (effective date of April 8, 2000).

As concerns claims 1 and 12, DSLreports.com discloses a bandwidth measurement device for a network coupled to said path, said bandwidth measurement device configured for independently determining upload and download data transfer rates between said client and said service node ("it benchmarks your line speed both up and down").

DSLreports.com does not explicitly disclose said network with a service node comprising: a gateway configured for connection to a network; a data routing system extending from said

switch to said gateway, said switch, data routing system and gateway collectively forming a path, through said service node, configured for coupling said client to said network; each one of said plurality of subscriber terminals coupled to said service node by a corresponding xDSL line; said service node comprising: a switch coupled to each one of said plurality of xDSL lines; a gateway coupled to the Internet; a data routing system extending from said switch to said gateway, said switch data routing system and gateway collectively forming a path, through said service node, for coupling each one of said plurality of subscriber terminals to the Internet. However, it would have been an obvious design choice to provide the network of the DSL speed test with a gateway, switch and an xDSL line.

As concerns claims 2, 13 and 15, it would have been an obvious design choice to have a router within a network.

As concerns claims 3 and 14, wherein said bandwidth measurement device is coupled to said gateway (~~coupled via the computer network~~).

As concerns claim 4, it would have been an obvious design choice to provide the network with an ATM edge switch since these limitations do not appear to effect the patentable operation of the invention and the invention would work equally well with another device or network.

As concerns claim 5, the service node of claim 3, it would have been an obvious design choice for said client is a PC and said network is the Internet. These limitations do not appear to effect the patentable operation of the invention and would work equally well with another device or network.

As concerns claims 6 and 16, wherein said bandwidth measurement device is a server ("test servers").

As concerns claims 7, 17 and 18, wherein a measurement application resides on said bandwidth measurement server (accessible via a browser), said measurement application determining said upload and download data transfer rates for said bandwidth measurement server (“it benchmarks your line speed, both up and down”).

As concerns claim 8, the service node of claim 7, wherein, if determining said upload data transfer rate between said client and said service node, said measurement application determines said upload data transfer rate based upon an analysis of arriving data packets originating at said client and, if determining said download data transfer rate between said service node and said client, said measurement application generates data packets for transfer to said client (“it benchmarks your line speed, both up and down”, “test is a transfer of data”, data is sent as packets).

As concerns claims 9 and 10, an applet/web application (“Java applet”, using a browser/web application to access database).

As concerns claims 11 and 19, wherein said bandwidth measurement server further comprises a measurement database (“test result archive”) coupled to said measurement application, said measurement database maintaining data collected during measurement of said upstream and/or downstream data transfer rates.

As concerns claim 20, wherein said measurement database is further coupled to said web application, said service provider terminal accessing said data maintained in said measurement database through said web application (“Java applet”, using a browser/web application to access database).

***Response to Amendment***

7. The Rule 131 Affidavit filed on January 12, 2006 under 37 CFR 1.131 is sufficient to overcome the He et al. '244 reference.

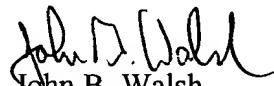
***Conclusion***

8. The finality of the rejection of the last Office action is withdrawn in view of applicant's Affidavit and the newly cited rejection (see above).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Wednesday from 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John B. Walsh  
Primary Examiner  
Art Unit 2151